

IT 95-29
Tax Type: INCOME TAX
Issue: Non-Filer (Income Tax)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ADMINISTRATIVE HEARINGS DIVISION
CHICAGO, ILLINOIS

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THE DEPARTMENT OF REVENUE      )  
OF THE STATE OF ILLINOIS      )  
                                )  
                                )  
          v.                    )    No.  
                                )  
XXXXXX                          )    Hollis D. Worm  
          Taxpayer(s)           )    Administrative Law Judge  
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RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This matter is before this administrative tribunal as the result of a timely Protest by XXXXX (hereinafter referred to as the "taxpayer") to a Notice of Deficiency (hereinafter referred to as the "Notice") issued to him on March 16, 1992. The basis of the Notice is the Illinois Department of Revenue's (hereinafter referred to as the "Department") determination that the taxpayer had failed to file an Illinois Income Tax return for the tax years ending December 31, 1984 and December 31, 1985. The Notice asserted an increased tax liability, as well as penalties pursuant to 35 ILCS 5/1001 and 5/804 for failure to file and failure to pay estimated tax, respectively.

In the taxpayer's Protest he contends that he was married during the 1984 and 1985 tax years and had seven exemptions in 1984 and eight exemptions in 1985, and that the Department is not giving him credit for the taxes withheld from his employment. The taxpayer did not request a hearing, so this matter will be decided on the information provided by the taxpayer in his Protest and on the Notice of Deficiency. The issues to be resolved are:

- (1). Whether the taxpayer failed to file an Illinois income tax

return for the 1984 and 1985 tax years?

(2). Whether penalties should be assessed pursuant to 35 ILCS 5/1001 and 5/804?

Following a review of the record, it is recommended that the Notice of Deficiency, as reduced by the Technical Review Unit, be upheld.

FINDINGS OF FACT:

1. For the subject taxable years, the taxpayer was an Illinois resident, earned income in the State of Illinois, and did not file Illinois income tax returns. Dept. Ex. No. 1

2. The Department of Revenue issued a Notice of Deficiency for the subject taxable years. Dept. Ex. No. 1

3. The taxpayer filed a timely Protest. Dept. Ex. No. 2

4. The taxpayer was married during the 1984 and 1985 tax years and had seven exemptions in 1984 and eight exemptions in 1985. Taxpayer Ex. No. 2

CONCLUSIONS OF LAW: All persons who either earn or receive income in or as a resident of the State of Illinois are subject to Illinois income tax. 35 ILCS 5/201(a) The taxpayer, as an Illinois resident who earned income in this state, was accordingly subject to Illinois income tax and was required to timely pay and file a return under the Illinois Income Tax Act. (35 ILCS 5/101 et seq.)

The Notice of Deficiency is prima facie correct so long as its proposed adjustments meet some minimum standard of reasonableness. *Vitale v. Illinois Department of Revenue*, 118 Ill.App.ed 210 (3rd Dist. 1983). In order to overcome this prima facie correctness, the taxpayer must present competent evidence that the proposed adjustments are incorrect. *Masini v. Department of Revenue*, 60 Ill.App.3d 11 (1st Dist.1978). The taxpayers have met that burden in this case.

The taxpayer presented evidence, consisting of copies of social

security cards and birth certificates, which indicated the taxpayer had seven children born between 1978 and 1990 in the State of Illinois. The taxpayer did not provide any evidence of the amount of tax withheld by his employer during the subject taxable years. Therefore, in recomputing the taxpayer's tax liability, the Technical Support Unit allowed the exemptions claimed by the taxpayer, but did not give him credit for withheld Illinois income taxes.

In addition to asserting a tax deficiency, the Notice proposes penalties pursuant to 35 ILCS 5/1001 and 5/804 for failure to file and failure to pay estimated tax, respectively. Penalties imposed under the provisions of 35 ILCS 5/1001, however, shall not apply if failure to file was due to reasonable cause. 35 ILCS 735/3-8.

The existence of reasonable cause justifying abatement of a penalty is a factual determination that can only be decided on a case by case basis (*Rorabaugh v. United States*, 611 F.2d 211 (7th Cir.,1979)) and has generally been interpreted to mean the exercise of ordinary business care and prudence (*Dumont Ventilation Company v. Department of Revenue*, 99 Ill.App.3d 263 (3rd Dist. 1981)). The burden of proof is upon a taxpayer to show by a preponderance of evidence that it acted in good faith and exercised ordinary business care and prudence in providing for the timely payment of its tax liability.

The taxpayer presented no evidence to support a finding that his failure to file a tax return was not due to negligence or that it was due to reasonable cause. He therefore failed to meet his burden of proof with respect to the aforementioned penalty.

35 ILCS 5/804 imposes a penalty for underpayment of estimated tax unless the taxpayer was not required to file an Illinois income tax return, or by reason of casualty, disaster, or other unusual circumstances the imposition of such penalty would be against equity and good conscience. 35

ILCS 5/804(e) and (f) The taxpayer was a resident of Illinois during the subject taxable year and therefore he was required to file an Illinois income tax return. Furthermore, the taxpayer presented no evidence to support a finding that his failure to file was due to casualty, disaster, or other unusual circumstances. Therefore this penalty should be assessed.

It is my recommendation that the Notice of Deficiency, as reduced by the findings of the Department's Technical Support Unit (attached), should be upheld.

Hollis D. Worm
Administrative Law Judge

May 2, 1995